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IN THE

Supreme Court of the United States

October Term, 1946.

No. 574

THE RESCUE ARMY, a corporation, and CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES,

Appellee.

APPELLANTS' REPLY TO APPELLEE'S BRIEF.

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APPELLANTS' REPLY TO APPELLEE'S BRIEF.

Appellants' counsel deems it necessary to reply to certain matters contained in appellee's brief.

Appellee's brief (p. 4), apologizes to this Court for "including statements of public records in its brief in the case of the Gospel Army v. City of Los Angeles, as having been the result of inadvertence. However, the inadvertence is repeated forthwith in its brief herein (p. 8), wherein it is, in substance and effect, related that the instant Ordinance has "for a quarter of a century" caused no complaints from those interested in collecting funds for charity, who have succeeded in making satisfactory reports of their endeavors, and that more than "Thirty Million Dollars" were so collected "during the first nine months of 1946."

This attempt to pump supposed red corpuscles into the otherwise pernicious anemic lifestream of appellee's defense of the validity of the Ordinance herein involved, is obviously improper.

Appellee's statements, "off the record," open a wide field. They involve matters which, if not barred by rules of evidence as well as of procedure, might have great persuasive force in this case. The verity of the statements, themselves, is obviously subject to challenge. Inquiry would be in order as to the probably limited group of "those" who are required to make such reports and is within said field, it being remembered that the "endorsed" organizations are exempted from such burdensome provisions of the Ordinance; and it would be proper to delve into said "official reports" for information as to how many of the "little people" organizations are to be found among the authorized distributors of the alleged "in excess of thirty million dollars" given for charity and to find out how promptly and efficiently the same was distributed to those in dire distress and immediate need.

By these examples of matters pertinent to appellee's testimonial statements, it seems obvious that the wisdom of rules which exclude subjects extrinsic of the record is justified and appellant again protests the continued inadvertence of the Los Angeles City attorney in his most recent brief.

Referring to Justice Carter's statement in his dissenting opinion in which he says that the requirements of the Notice of Intention provision (Sec. 44.06), are more complex and demanding than the much maligned income tax," and will "doubtless effect the disappearance of all but organized institutions," appellee's brief (p. 9), declares that

the above prediction "is wholly unsupported by the facts," unless "he intends to include" in the term "organized institutions," "local units of Parent-Teachers' Associations, Job's Daughters, and hundreds of other community groups which give dances, teas, dinners, etc., to secure funds for charitable uses."

Here again, the Los Angeles City Attorney, by inference and plain implication testifies that "hundreds" of organizations such as those named have been unhampered under the instant ordinance, and that, consequently, Justice Carter's analysis of Section 44.06 and its burdensome, time-consuming demands; is valueless.

Had appellees attempted, by discussing the provisions which Justice Carter analyzed, to show wherein the jurist was in error, this would have been fair argument, but the testimony given by implication is improper.

We question the truth of the allegations which are made, especially when it is implied that there are "hundreds of the organizations which appellees describe; we doubt that any of them upon giving a "tea," a "dance" or a "dinner," are required by the Department to file a "notice of intention" and to accompany the same with the voluminous data provided by Section 44.06. Appellant would, if the subject were properly before this Court, expect to show from appellee's records, that Justice Carter's prediction could well have been stated as a long-accomplished fact.

Hence, the impropriety of opening issues by prejudicial, unverified and *irrelevant* statements, directly or impliedly made, is apparent.

None of these matters were considered by the State Supreme Court nor have they been heretofore presented in appellee's briefs, and appellant asks that they be disregarded.

Concerning appellee's brief as it deals with the merits of the appeal, appellants believe the following matters require elucidation:

I.

Appellees' Brief (p. 4) Errs in Its Statement of "Questions of Law" Number "(2)", which Is Set Forth as Follows:

> "(2) Is an ordinance which prohibits solicitation for charity by means of boxes and receptacles without a permit so to do, and which exempts from such prohibition solicitations 'made *solely* for evangelical, missionary or religious purposes,' invalid as it applies to the appellants, and particularly as to appellant Murdock?" (Emphasis added.)

The question concerning Section 44.09 and issue of law as presented by appellant's opening brief and enumeration of "errors to be urged" (App. Op. Br. p. 16 *et seq.*, and pp. 41-43) is as follows:

Is an ordinance which prohibits solicitation for charities by boxes and receptacles, "except by express written permission of the Board," unreasonable, arbitrary and discriminatory, and violative of the due process clause and the equal protection of the laws clause of the 14th amendment to the Federal Constitution in that it provides no standard by which the Board must be guided, and thus, does not said provision impower the Board to arbitrarily and capriciously favor certain applicants and to punish or otherwise discriminate unreasonably against others?; also, the further question concerning the validity of this section, is presented: Does not said quoted language of Section 44.09, violate the right to exercise religious freedom of a solicitor for charity or religion, as well as upon the other grounds above stated?

The failure of appellee's counsel to grasp the real questions involved in appellant's attack upon the validity of Section 44.09, no doubt accounts for the entire lack of any attempt to rebut appellant's contentions in that behalf, although appellee's brief engages in generalizations and the citation of irrelevant principles of law while discussing said section. (See App. Br. pp. 10-12.)

Whatever may be the reason, it is certain that the true and only question explicitly set forth and argued in appellant's opening brief and statement of grounds to be urged, is not even mentioned in appellee's brief.

II.

Appellee's Brief Refers to Certain Sections, Among Which Are Sections 44.9, 44.05, 44.16, and Asserts That They Do Not Involve a "Religious Test."

By each of these sections, the Department is given unrestricted power to make decisions and to do so by any test, religious or secular, which their inclinations suggest, while by Section 44.16, the Ordinance itself arbitrarily creates the test, namely, that an activity must be for a "solely" religious purpose, or it is made non-religious, and the board is empowered to decide whether a given solicitation will be for a "solely" religious purpose.

Since the ordinance clearly evinces the purpose of segregating religious and charitable activities upon this unreasonable and arbitrary basis, the Department which administers the law, not only may, but should, to effectuate the law, apply the religious test prescribed therein in all of the numerous instances wherein said administrative board is given unrestricted discretion in making determinations as to facts.

III.

The Opposing Brief (p. 15) Asserts That the State Supreme Court Held That the Ordinance Involved "Does Not Infringe Upon One's Religious Liberty, Inasmuch as It Exempts From It the Provisions of Such Ordinance Solicitation 'solely for Evangelical, Missionary or Religious Purposes' ".

Unfortunately appellee's brief neither quotes the majority opinion nor cites the transcript.

However, appellant's counsel, is unable to find in the opinion any language in accord with the above statement.

On the contrary the majority opinion decided that the ordinance specifically differentiates charitable from religious purposes (Gospel Army, Stat. of Jur. p. 70), and holds that the severance of charity from religion by a regulatory law, as an exercise of the police power, does not violate the constitutional guarantee of freedom of religion; and the provisions of Section 44.16 which effects the severance, on the basis of classing all activities as charitable which are not "solely" for evangelical, etc. purposes is within the group of sections which said opinion saves from unconstitutionality by saying: "We find nothing unduly burdensome or unreasonable in any of these provisions." (Gospel Army, Stat. of Jur. p. 56), and as to the provisions of the entire ordinance, said opinion states: "In our opinion the classification affected by this ordinance is reasonable and the standards provided are adequate." (Gospel Army, Stat. of Jur. p. 60.)

By these generalities and not otherwise, as Justice Carter points out, are the various challenges by appellant to individual provisions of particular sections, decided and rejected, among which provisions challenged is the classi-

fication of religious and charitable activities and the arbitrary demarkation line between them made by the term "solely" in section 44.16.

Reply to Appellees Point IV.

Appellee's Point IV consists, almost exclusively, of bald assertions relative to the effect of the Ordinance sections to which it refers. For example, it is said:

> "The City of Los Angeles does not, by its Ordinance, permit the Social Service Department of the City to refuse a 'permit' . . . ."

Appellee fails to point to any language, word or syllable of the Ordinance which names the conditions upon which, if complied with, a permit must be issued. There is no such provision to be pointed out.

On the contrary, as shown in the dissenting opinion of Justice Carter, and in appellant's opening brief herein, appellant has always contended that "under a properly-drawn Ordinance" standards must be provided which the Administrative Board must follow, and that since the instant Ordinance contains no such standards, it violates the due process clause.

Inconsistently, on the same page (p. 15) of appellee's brief, an argument is made as follows: the right to investigate "connotes the right to take appropriate action after conducting the investigation. Thus assuming that the investigation discloses that the applicant had recently served a sentence for embezzlement and had a long criminal record" who would say that under a properly drawn ordinance the city could not refuse him registration?

This sounds quite plausible but it proves too much.

It cannot be and has not been denied that the ordinance permits investigations, without limit as to scope or time and at several stages of the proceeding through which the application for a permit passes and that no provision requires that upon certain named conditions a permit shall be issued.

Therefore, if the power to investigate connotes power to take "appropriate" action, and to deny a permit in the case supposed, how can it be rationally declared that the ordinance does not permit the Department "to refuse a permit?"

Of course, the Department may refuse a permit, and in appellant's brief in reply to appellee's brief in the *Gospel Army* case, it has been shown by the reporter's transcript that the Department did refuse a permit to that organization and claimed the right to refuse any such application.

If, as appellees indicate, it is proper, under this standardless Ordinance, that a permit should be denied to an embezzler and a long-record criminal, there is nothing to prevent the denial of a permit to one of God's noblemen who advocates some religious view or ideology which the Board members happen to regard as heresy, or, they may act upon any other whim or prejudice.

On the other hand, appellant denies that, regarding the matter from the religious aspect, a city can deny a permit to one who seeks to preach the Gospel or to sell religious literature or to solicit secondhand goods or money for a religious cause on the sole basis that he has committed one or more crimes. Surely to empower a city to deny a permit upon that ground alone would require that the Ordinance authorizing it be narrowly drawn with the

most clear precision and reasonableness as to the conditions which empower such denial.

The recency of the embezzlement would be immaterial, for the worst sinner can repent in a moment. It seems that the only reasonable and lawful condition which could be set up would be that reformation or rehabilitation of the applicant be shown.

It is believed that other matters presented in appellee's brief have been covered in appellants' opening brief.

Respectfully submitted,

ROBERT H. WALLIS,

Attorney for Appellants, The Rescue Army and Charles T. Murdock.